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Sixth Committee
Agenda item 81
Report of the International Law Commission on the work of its sixty-third session

Draft resolution

Effects of armed conflicts on treaties

The General Assembly,

Having considered chapter VI of the report of the International Law Commission on the work of its sixty-third session,[1] which contains the draft articles on the effects of armed conflicts on treaties,

Noting that the International Law Commission decided to recommend to the General Assembly that it should take note of the draft articles on the effects of armed conflicts on treaties in a resolution and annex the draft articles to that resolution, and that it should consider at a later stage, the elaboration of a convention on the basis of the draft articles,[2]

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (*a*), of the Charter of the United Nations,

Noting that the subject of the effects of armed conflicts on treaties is of major importance in the relations of States,

1. *Welcomes* the conclusion of the work of the International Law Commission on the effects of armed conflicts on treaties and its adoption of the draft articles and a detailed commentary on the subject;

2. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

[1] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10).
[2] Ibid., para. 97.

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3. *Takes note* of the articles on the effects of armed conflicts on treaties, presented by the International Law Commission, the text of which is annexed to the present resolution, and commends them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action;

4. *Decides* to include in the provisional agenda of its sixty-ninth session an item entitled "Effects of armed conflicts on treaties" with a view to examining, inter alia, the question of the form that might be given to the draft articles.

Annex
Effects of armed conflicts on treaties

Part one
Scope and definitions

Article 1
Scope

The present articles apply to the effects of armed conflict on the relations of States under a treaty.

Article 2
Definitions

For the purposes of the present articles:

(a) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation, and includes treaties between States to which international organizations are also parties;

(b) "Armed conflict" means a situation in which there is resort to armed force between States or protracted resort to armed force between governmental authorities and organized armed groups.

Part two
Principles

Chapter I
Operation of treaties in the event of armed conflicts

Article 3
General principle

The existence of an armed conflict does not ipso facto terminate or suspend the operation of treaties:

(a) As between States parties to the conflict;

(b) As between a State party to the conflict and a State that is not.

Article 4
Provisions on the operation of treaties

Where a treaty itself contains provisions on its operation in situations of armed conflict, those provisions shall apply.

Article 5
Application of rules on treaty interpretation

The rules of international law on treaty interpretation shall be applied to establish whether a treaty is susceptible to termination, withdrawal or suspension in the event of an armed conflict.

Article 6
Factors indicating whether a treaty is susceptible to termination, withdrawal or suspension

In order to ascertain whether a treaty is susceptible to termination, withdrawal or suspension in the event of an armed conflict, regard shall be had to all relevant factors, including:

(a) The nature of the treaty, in particular its subject matter, its object and purpose, its content and the number of parties to the treaty;

(b) The characteristics of the armed conflict, such as its territorial extent, its scale and intensity, its duration and, in the case of non-international armed conflict, also the degree of outside involvement.

Article 7
Continued operation of treaties resulting from their subject matter

An indicative list of treaties, the subject matter of which involves an implication that they continue in operation, in whole or in part, during armed conflict, is to be found in the annex to the present articles.

Chapter II
Other provisions relevant to the operation of treaties

Article 8
Conclusion of treaties during armed conflict

1. The existence of an armed conflict does not affect the capacity of a State party to that conflict to conclude treaties in accordance with international law.

2. States may conclude agreements involving termination or suspension of a treaty or part of a treaty that is operative between them during situations of armed conflict, or may agree to amend or modify the treaty.

Article 9
Notification of intention to terminate or withdraw from a treaty or to suspend its operation

1. A State intending to terminate or withdraw from a treaty to which it is a Party, or to suspend the operation of that treaty, as a consequence of an armed conflict shall notify the other State Party or States Parties to the treaty, or its depositary, of such intention.

2. The notification takes effect upon receipt by the other State Party or States Parties, unless it provides for a subsequent date.

3. Nothing in the preceding paragraphs shall affect the right of a Party to object within a reasonable time, in accordance with the terms of the treaty or other applicable rules of international law, to the termination of or withdrawal from the treaty, or suspension of its operation.

4. If an objection has been raised in accordance with paragraph 3, the States concerned shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

5. Nothing in the preceding paragraphs shall affect the rights or obligations of States with regard to the settlement of disputes insofar as they have remained applicable.

Article 10
Obligations imposed by international law independently of a treaty

The termination of or the withdrawal from a treaty, or the suspension of its operation, as a consequence of an armed conflict, shall not impair in any way the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of that treaty.

Article 11
Separability of treaty provisions

Termination, withdrawal from or suspension of the operation of a treaty as a consequence of an armed conflict shall, unless the treaty otherwise provides or the Parties otherwise agree, take effect with respect to the whole treaty except where:

(a) The treaty contains clauses that are separable from the remainder of the treaty with regard to their application;

(b) It appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other Party or Parties to be bound by the treaty as a whole; and

(c) Continued performance of the remainder of the treaty would not be unjust.

Article 12
Loss of the right to terminate or withdraw from a treaty or to suspend its operation

A State may no longer terminate or withdraw from a treaty or suspend its operation as a consequence of an armed conflict if, after becoming aware of the facts:

(a) It shall have expressly agreed that the treaty remains in force or continues in operation; or

(b) It must by reason of its conduct be considered as having acquiesced in the continued operation of the treaty or in its maintenance in force.

Article 13
Revival or resumption of treaty relations subsequent to an armed conflict

1. Subsequent to an armed conflict, the States Parties may regulate, on the basis of agreement, the revival of treaties terminated or suspended as a consequence of the armed conflict.

2. The resumption of the operation of a treaty suspended as a consequence of an armed conflict shall be determined in accordance with the factors referred to in article 6.

Part three
Miscellaneous

Article 14
Effect of the exercise of the right to self-defence on a treaty

A State exercising its inherent right of individual or collective self-defence in accordance with the Charter of the United Nations is entitled to suspend in whole or in part the operation of a treaty to which it is a Party insofar as that operation is incompatible with the exercise of that right.

Article 15
Prohibition of benefit to an aggressor State

A State committing aggression within the meaning of the Charter of the United Nations and resolution 3314 (XXIX) of the General Assembly of the United Nations shall not terminate or withdraw from a treaty or suspend its operation as a consequence of an armed conflict that results from the act of aggression if the effect would be to the benefit of that State.

Article 16
Decisions of the Security Council

The present articles are without prejudice to relevant decisions taken by the Security Council in accordance with the Charter of the United Nations.

Article 17
Rights and duties arising from the laws of neutrality

The present articles are without prejudice to the rights and duties of States arising from the laws of neutrality.

Article 18
Other cases of termination, withdrawal or suspension

The present articles are without prejudice to the termination, withdrawal or suspension of treaties as a consequence of, inter alia: (a) a material breach; (b) supervening impossibility of performance; or (c) a fundamental change of circumstances.

Annex
Indicative list of treaties referred to in article 7

(a) Treaties on the law of armed conflict, including treaties on international humanitarian law;

(b) Treaties declaring, creating or regulating a permanent regime or status or related permanent rights, including treaties establishing or modifying land and maritime boundaries;

(c) Multilateral law-making treaties;

(d) Treaties on international criminal justice;

(e) Treaties of friendship, commerce and navigation and agreements concerning private rights;

(f) Treaties for the international protection of human rights;

(g) Treaties relating to the international protection of the environment;

(h) Treaties relating to international watercourses and related installations and facilities;

(i) Treaties relating to aquifers and related installations and facilities;

(j) Treaties which are constituent instruments of international organizations;

(k) Treaties relating to the international settlement of disputes by peaceful means, including resort to conciliation, mediation, arbitration and judicial settlement;

(l) Treaties relating to diplomatic and consular relations.